

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

03<sup>CV</sup> 12248 RWZ

WILLIAM RYAN and JOHN J. SHAUGHNESSY,  
as they are TRUSTEES, INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL 4 HEALTH  
AND WELFARE, PENSION AND ANNUITY FUNDS,  
and LOUIS G. RASETTA and CHRISTOPHER  
BARLETTA, as they are TRUSTEES, HOISTING AND  
PORTABLE ENGINEERS LOCAL 4 APPRENTICE  
AND TRAINING FUNDS and INTERNATIONAL  
UNION OF OPERATING ENGINEERS, LOCAL 4,  
Plaintiffs

vs.

MKM SITE DEVELOPMENT CORP.,  
Defendant

MAGISTRATE JUDGE *Collings*

C.A. No.

AMOUNT \$ *150*  
SUMMONS ISSUED *405*  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK. *11/17/03*

**COMPLAINT**

**NATURE OF ACTION**

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145 and §301 of the Labor Management Relations Act, 29 U.S.C. §185 by employee benefit plans and a labor union to enforce the obligations to make contributions and pay interest due to such plans due under the terms of a collective bargaining agreement and the plans.

**JURISDICTION**

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (e) and (f), without respect to the amount in controversy or the citizenship of the parties.

**PARTIES**

3. Plaintiffs William Ryan and John J. Shaughnessy are Trustees of the International Union of Operating Engineers Local 4 Health and Welfare Fund. The International Union of Operating Engineers Local 4 Health and Welfare Fund is an “employee welfare benefit plan” within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3). The Fund is administered at 177 Bedford Street, Lexington, Massachusetts, within this judicial district.

4. Plaintiffs William Ryan and John J. Shaughnessy are Trustees of the International Union of Operating Engineers Local 4 Pension Fund. The International Union of Operating Engineers Local 4 Pension Fund is an “employee pension benefit plan” within the meaning of §3(2) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 177 Bedford Street, Lexington, Massachusetts, within this judicial district.

5. Plaintiffs William Ryan and John J. Shaughnessy are Trustees of the International Union of Operating Engineers Local 4 Annuity Fund. The International Union of Operating Engineers Local 4 Annuity Fund is an “employee pension benefit plan” within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 177 Bedford Street, Lexington, Massachusetts, within this judicial district.

6. Plaintiffs Louis G. Rasetta and Christopher Barletta are Trustees of the Hoisting and Portable Engineers Local 4 Apprenticeship and Training Fund. The Hoisting and Portable Engineers Local 4 Apprenticeship and Training Fund is an “employee welfare benefit plan” within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at One Engineers Way, Canton, Massachusetts, within this judicial district.

7. The Health and Welfare, Pension, Annuity, Apprenticeship and Training Funds are multi-employer plans within the meaning of §3(37) of ERISA, 29 U.S.C. §1002(37). They are hereinafter collectively referred to as “the Funds.”

8. Defendant MKM Site Development Corp. (hereinafter “MKM” or “the Employer”) is a Massachusetts corporation with a principal place of business at 69 Milk Street, Suite #200, Westborough, Massachusetts, and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12).

### **GENERAL ALLEGATIONS OF FACT**

9. On or about April 28, 2003, defendant MKM agreed in writing to be bound to the terms of the Restated Agreements and Declarations of Trust establishing Plaintiff Funds, to the terms of collective bargaining agreements requiring contributions to Plaintiff Funds; and to any successor agreements. A copy of MKM’s signed agreement (“short form agreement”) is attached hereto as Exhibit A.

10. Because of the short form agreement, MKM is party to two collective bargaining agreements with the International Union of Operating Engineers Local 4, the Shop Agreement which is effective from May 1, 2003 through May 31, 2006 and the Utility Agreement, which is effective from January 1, 1999 through May 31, 2005. Copies of those Agreements (hereinafter, collectively, “the Agreements”) are attached hereto as Exhibits B and C, respectively.

11. The Agreements require MKM to make contributions to Plaintiff Funds for each payroll hour for each person covered by the Agreements, in accordance with the rates set forth on the Schedules of Wages.

12. Pursuant to the Agreement, employers are also obligated to deduct and remit a negotiated percentage of the gross wage package, before taxes, for union dues.

**COUNT I - VIOLATION OF ERISA -  
DELINQUENT CONTRIBUTIONS**

13. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-12 supra.

14. On or about October 6, 2003, the Funds audited the payroll records of MKM for the period July through October, 2003 and determined that MKM owes the Funds \$69,229.98 for the period covered by the audit.

15. By letter dated October 8, 2003, the Funds sought payment of these delinquent contributions. A copy of that letter is attached hereto as Exhibit D.

16. To date, MKM has failed to pay the Funds the \$69,229.98 in contributions due for the period July through October, 2003. It has also failed to pay the interest and penalties owed.

17. The failure of MKM to make contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreements violates §515 of ERISA, 29 U.S.C. §1145.

18. Absent an order from this Court, the defendant will continue to refuse to pay the monies it owes to the Funds, as determined at the audit, and the Funds and their participants will be irreparably damaged.

19. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**COUNT II - VIOLATION OF LMRA -  
DELINQUENT CONTRIBUTIONS AND INTEREST**

20. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-19 supra.

21. The failure of MKM to make contributions on behalf of all covered employees and to pay interest as required by the terms of the collective bargaining agreement violates §301 of the Labor Management Relations Act, 29 U.S.C. §185.

**COUNT III - VIOLATION OF LMRA  
DUES**

22. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-21 supra.

23. MKM deducted dues from its employees' paychecks and failed to remit them to the Union.

24. The failure of MKM to remit the dues it deducted from its employees' wages as required by the terms of the collective bargaining agreement violates §301 of the Labor Management Relations Act, 29 U.S.C. §185.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff Funds requests this Court to grant the following relief:

- a. Order the attachment of the machinery, inventory and accounts receivable of defendant MKM;
- b. Enter a preliminary and permanent injunction enjoining MKM from refusing or failing to make contributions and pay dues and interest to Plaintiff Funds;
- c. Enter judgment in favor of the Plaintiff Funds in the amount of \$69,229.98 plus any additional amounts determined by the Court to be owed by MKM or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages in an amount equal to

20 percent of the total of unpaid contributions or the total interest owed, whichever is greater, reasonable attorneys' fees, and costs, all pursuant to 29 U.S.C. §1132(g)(2); and

d. Such further and other relief as this Court deem appropriate.

Respectfully submitted,

WILLIAM RYAN and JOHN J.  
SHAUGHNESSY, as they are TRUSTEES,  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 4  
HEALTH AND WELFARE FUND, et al,

By their attorneys,



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Dated: November 13, 2003